

AO 120 (Rev. 3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
---------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Southern District of Indiana on the following ☐ Patents or ☒ Trademarks:


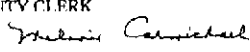
DOCKET NO. 1:08-cv-169-B/K	DATE FILED 12/18/2008	U.S. DISTRICT COURT Southern District of Indiana
PLAINTIFF SURROGATE MOTHERS, INC.		DEFENDANT ROSA BALCAZAR and B.COMING FERTILITY, INC.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 2,338,046	4/4/2000	Alternatives to infertility (copy of complaint attached)
2		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK 	(BY) DEPUTY CLERK 	DATE 12/22/2008
----------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------	--------------------

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

AO 120 (Rev. 3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
---------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Southern District of Indiana on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. 1:08-cv-169-B/K	DATE FILED 12/18/2008	U.S. DISTRICT COURT Southern District of Indiana
PLAINTIFF SURROGATE MOTHERS, INC.		DEFENDANT ROSA BALCAZAR and B.COMING FERTILITY, INC.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 2,338,046	4/4/2000	Alternatives to infertility (copy of complaint attached)
2		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK <i>James R. Briggs</i>	(BY) DEPUTY CLERK <i>Michael Calvich</i>	DATE 12/22/2008
---------------------------------	---------------------------------------------	--------------------

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

AO 120 (Rev. 3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
--------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Southern District of Indiana on the following ☐ Patents or ☐ Trademarks:

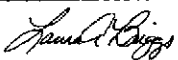
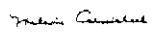
DOCKET NO. 1:08-cv-1685-S-S	DATE FILED 12/18/2008	U.S. DISTRICT COURT Southern District of Indiana
PLAINTIFF BUZTRONICS, INC.		DEFENDANT LITECUBES, L.L.C.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 7,401,935	7/22/2008	Beverage Accessory Devices (copy of complaint attached)
2		
3		
4		
5		

In the above--entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above--entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK 	(BY) DEPUTY CLERK 	DATE 12/22/2008
----------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------	--------------------

Copy 1--Upon initiation of action, mail this copy to Director Copy 3--Upon termination of action, mail this copy to Director
 Copy 2--Upon filing document adding patent(s), mail this copy to Director Copy 4--Case file copy

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
DEC 18 AM 11:26
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

BUZTRONICS, INC.,

Plaintiff,

v.

LITECUBES, L.L.C.,

Defendant.

Cause No. _____

1 : 08-cv- 1685 SEB-JMS

COMPLAINT AND JURY DEMAND

1. This action arises from false and misleading accusations of patent infringement by defendant Litecubes, L.L.C. ("Litecubes"), in an effort to suppress competition from plaintiff Buztronics, Inc. ("Buztronics"). Both Buztronics and Litecubes are in the business of supplying electronic novelty products that incorporate light-up or flashing features, including glowing ice cube products. Both Buztronics and Litecubes have secured patent protection covering defined characteristics of their respective ice cube products. Even though the Buztronics products do not infringe any valid claim of any patent held by Litecubes, Litecubes has nevertheless falsely accused Buztronics of infringement and has misleadingly exaggerated the scope of its patent rights in an effort to prevent Buztronics from competing fairly and effectively. Buztronics therefore seeks relief for the damages arising from Litecubes' market misconduct and brings this action to prevent Litecubes from engaging in further wrongful efforts to suppress Buztronics' lawful competition.

Parties, Jurisdiction and Venue

2. Buztronics is a corporation organized and existing pursuant to the laws of the State of Indiana, having its principal place of business in Indianapolis, Indiana.
3. On information and belief, Litecubes is a California Limited Liability Joint Stock Company, having its principal place of business in San Diego, California.
4. Litecubes has done and is doing business in the State of Indiana, and resides in the Southern District of Indiana for purposes of jurisdiction and venue.
5. This action raises claims arising under federal law, in particular 15 U.S.C. §1125, 28 U.S.C. §2201 and Fed. R. Civ. P. 57. The declaratory relief being sought relates to false accusations of infringement of a patent issued under 35 U.S.C. §151 et seq.
6. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to 28 U.S.C. §§1331, 1332 and 1338.
7. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b)-(c).

Facts Relevant to All Counts

8. Buztronics is a leading supplier of specialty novelty products, in particular products that incorporate light-up or flashing characteristics. For many years, Buztronics has marketed a wide variety of such products, including buttons, pens, keychains, party supplies, toys and wands. Since January 2005 or earlier, Buztronics has marketed a line of Cool Gel Glow Ice Cubes, featuring an interior gel that becomes illuminated when the cube comes in contact with liquid. Buztronics has secured patent protection on the proprietary technology utilized in its Cool Gel Glow Ice Cube products.

9. Buztronics competes with Litecubes in interstate commerce in the markets for specialty promotional and electronic novelty products. Like Buztronics, Litecubes markets a variety of light-up products, including ice cubes, golf balls, shot glasses, hats and straws.

10. On July 22, 2008, United States Letters Patent No. 7,401,935 (the "'935 patent") issued on an application naming Carl R. VanderSchuit as inventor. A copy of the '935 patent is attached hereto as Exhibit A and incorporated herein by reference. The '935 patent contains claims on certain defined Beverage Accessory Devices that incorporate specified elements and characteristics. On information and belief, the '935 patent has been assigned to Litecubes.

11. In September 2008, Terry Hickey, an officer of Litecubes, sent a copy of the '935 patent to Edward "Buz" Lewis, founder and president of Buztronics. Mr. Hickey asserted that the '935 patent had "ramification" for Buztronics' products. The communication from Mr. Hickey also included a notice asserting: "We vigorously defend our intellectual property rights."

12. In subsequent communications, Mr. Hickey asserted that the accused Buztronics products included any cubes that have a gel material inside them. He further identified claims 4, 10 and 11 of the '935 patent as the claims allegedly infringed by Buztronics.

13. In response to Mr. Hickey's accusations, Buztronics provided a written analysis by its outside patent counsel, explaining that claim 4 is a dependent claim incorporating all the limitations set forth in claim 1, that claim 1 requires a fluid-tight container within the cavity of the housing, that the Buztronics products did not include any such internal container, and that therefore claim 4 was not infringed. Buztronics' patent counsel further explained that, although the '935 patent claims priority from certain prior applications, the first written description of the device claimed in claims 10 and 11 was set forth in the '935 patent itself, and therefore the priority date for those claims is the actual filing date of the '935 patent, which was June 16,

2006. The accused Buztronics products were on sale more than one year prior to that date, and therefore constitute prior art with respect to claims 10 and 11 of the '935 patent. If those claims covered the Buztronics products, accordingly, they would be invalid in light of the Buztronics prior art.

14. Notwithstanding the written explanation from Buztronics' patent counsel, Litecubes has persisted in accusing Buztronics of infringing the '935 patent. Mr. Hickey subsequently asserted that claims 14, 15, 16 and 19 are "directly on point" with respect to the Buztronics products. Mr. Hickey further asserted that the issue is whether the Buztronics products infringe any claim of the '935 patent and that "we think they do."

15. Buztronics' outside patent counsel then provided a second written analysis explaining that the accused Buztronics products are prior art with respect to claims 14, 15, 16 and 19 of the '935 patent for the same reasons explained in connection with claims 10 and 11, and therefore those claims must be either not infringed by Buztronics or invalid in light of the Buztronics prior art. Patent counsel further noted the invalidity of one claim in light of another prior art patent, the invalidity of two other claims in light of other prior art documents, and the unenforceability of the '935 patent due to iniquitable conduct involving the failure of the applicant's counsel to disclose to the patent examiner invalidating prior art documents that were known to Litecubes as a result of an earlier lawsuit.

16. Litecubes has falsely exaggerated the scope of its patent rights and has falsely accused Buztronics of infringement. Litecubes has asserted and implied that the '935 patent covers any illuminated ice cube containing a gel material, even though every claim of the '935 patent includes additional material limitations that must all be satisfied for a given product to be covered, and even though the Patent and Trademark Office has repeatedly rejected a patent claim

sought by Litecubes that would allegedly cover any illuminated ice cube containing a gel material. On information and belief, Litecubes has publicized its false and misleading assertions of patent coverage and its false and misleading accusations of infringement in the market in which Litecubes and Buztronics compete. Buztronics has been substantially injured in its business by Litecubes' false and misleading assertions.

Count I: Violation of Lanham Act §43(a)

17. Buztronics repeats and incorporates by reference the averments set forth in ¶¶1-16, inclusive.

18. Litecubes has attempted to suppress Buztronics' competition by making false and misleading statements and representations concerning the '935 patent, its scope, its applicability to Buztronics' products and the legal rights of Buztronics to market its competitive products.

19. Litecubes has misleadingly exaggerated the scope of the '935 patent and has wrongfully accused Buztronics of infringement. Litecubes has persisted in its false assertions and wrongful accusations despite actual notice that Buztronics does not infringe any valid claim of the '935 patent.

20. On information and belief, Litecubes has publicized its false and misleading representations relating to the '935 patent in the marketplace in which Litecubes and Buztronics compete.

21. Litecubes' false and misleading representations concerning the '935 patent and Buztronics are likely to cause confusion and mistake in the market in which Litecubes and Buztronics compete, and to deceive the marketplace.

22. Litecubes has publicized false designations, false and misleading descriptions of fact and false and misleading representations of fact in violation of Lanham Act §43(a), 15 U.S.C. §1125(a).

23. Buztronics has suffered and, in the absence of judicial relief, is likely to continue to suffer injury as a result of Litecubes' false and misleading representations concerning the '935 patent.

24. Buztronics is entitled, pursuant to 15 U.S.C. §§1117, 1125(a), to recover its reasonable attorney fees and litigation expenses incurred in connection with remedying Litecubes' false and misleading representations.

Count II: Declaratory Relief

25. Buztronics repeats and incorporates by reference the averments set forth in ¶¶1-24, inclusive.

26. Buztronics has been subjected to unfounded threats and demands under claim of legal right by Litecubes, raising disputes as to the scope, validity and enforceability of the '935 patent, alleged infringement of Litecubes' alleged intellectual property rights by Buztronics, and Buztronics' rights to market its products in competition with Litecubes. There is an actual and ongoing controversy, or at very least the ripening seeds of a controversy, between Buztronics and Litecubes.

27. Declaratory relief would resolve the disputes as to the rights, status and obligations of the parties, would quiet and stabilize their relations and would otherwise assist in resolving the controversy between Buztronics and Litecubes. Declaratory relief would further resolve the uncertainty and insecurity raised by Litecubes' unfounded threats and accusations and would prevent Litecubes from further damaging Buztronics' reputation and ability to

compete fairly and effectively in the marketplace. The parties have asserted adverse legal interests of sufficient immediacy and reality to warrant declaratory relief.

28. Buztronics has not infringed and is not infringing any valid claim of the '935 patent, either literally or by the doctrine of equivalents.

29. The '935 patent is invalid under 35 U.S.C. §§102, 103 and 112, and is unenforceable.

30. Buztronics is entitled to compete openly and vigorously against Litecubes. The public interest would be served by permitting such competition to continue without the impediment of Litecubes' groundless accusations.

31. Pursuant to 28 U.S.C. §2201 and Fed. R. Civ. P. 57, Buztronics is entitled to declaratory relief establishing that it is not infringing any valid claim of the '935 patent and that the '935 patent is invalid and unenforceable.

WHEREFORE, Buztronics respectfully prays that the Court enter judgment in favor of Buztronics on all counts, award the damages suffered by Buztronics as a result of the Lanham Act §43(a) violations by Litecubes as alleged in Count I, award Buztronics its reasonable attorney fees and litigation expenses, enter an injunction to prohibit Litecubes from engaging in the future in the misconduct addressed herein, grant the declaratory relief sought in Count II, and provide such further and additional relief as may be appropriate in the premises.

CLAIM OF RIGHT TO TRIAL BY JURY

Buztronics hereby respectfully claims its right to trial by jury on all claims and issues that may be tried to a jury under applicable law.

By its attorneys,

LEWIS & KAPPES

By: 

David W. Gray (7260-49)

By: 

Gary P. Price (5821-49)

By: 

Todd A. Richardson (16620-49)

LEWIS & KAPPES
One American Square, Suite 2500
Indianapolis, Indiana 46282
(317) 639-1210